

### **REMARKS**

Claims 1-20 are pending in the present application. Reconsideration and withdrawal of the present rejections in view of the comments presented herein are respectfully requested.

#### **Rejection under 35 U.S.C. § 102(a)**

Claims 1-20 were rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Hirayama et al. (IEEE Xplore, October 22, 2004).

Hirayama was published on October 22, 2004. The present application claims priority to Japanese Patent Application No. 2004-045043, filed on February 20, 2004, Japanese Patent Application No. 2004-045044, filed on February 20, 2004, Japanese Patent Application No. 2004-182300, filed on June 21, 2004, and Japanese Patent Application No. 2004-182301, filed on June 21, 2004. Thus, all of these applications were filed prior to the publication date of Hirayama. Enclosed herewith are certified translations of all four Japanese priority documents. All of the pending claims in the present application are fully supported by the disclosure of these priority applications. Thus, Hirayama et al. does not qualify as prior art against the present claims.

In view of the comments provided above, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §102(a).

#### **Obviousness-type double patenting**

Claims 1-5, 8-13 and 16-20 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over various claims of the following commonly owned copending applications: 11/813,511, 11/914,451 and 11/994,602.

According to MPEP 804(I)(B)(1), “[i]f a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.” Among the present application and Application Nos. 11/813,511, 11/914,451 and 11/994,602, the present application was the earliest-filed, and the only remaining rejection (after withdrawal of the present rejection under 35 U.S.C. § 102(a)) is an obviousness-type double patenting. In addition, Application Nos. 11/813,511, 11/914,451 and 11/994,602 (the later-filed applications) have not yet been found to be in condition for allowance. As such, these applications may be rejectable on other grounds.

Thus, Applicants respectfully request that the Examiner withdraw the provisional obviousness-type double patenting rejections over Application Nos. 11/813,511, 11/914,451 and 11/994,602, and allow the present case to issue.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

Applicants submit that all claims are in condition for allowance. However, if minor matters remain, the Examiner is invited to contact the undersigned at the telephone number provided below. If any additional fees are required, please charge these to Deposit Account No. 11-1410. Should there be any questions concerning this application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 20, 2010

By: /Neil S. Bartfeld/

Neil S. Bartfeld, Ph.D.  
Registration No. 39,901  
Agent of Record  
Customer No. 20,995  
(858) 836-9000